

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-186411

DATE: August 18, 1976

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MATTER OF: Hercules Demolition Corporation

**DIGEST:**

Cancellation of IFB for demolition work and subsequent procurement by negotiation is upheld where contracting officer is prepared to formalize determination that only responsive bid, which is within Government estimate considered unreliable and which is 36 percent higher than unacceptable low bid, is unreasonable as to price.

Invitation for bids (IFB) No. GS-00B-03380 was issued by the General Services Administration (GSA) on March 18, 1976. The IFB was for Phase I demolition at the International Chancery Center, Washington, D. C. Of the 14 bids received and opened on April 27, 1976, only the bid of Hercules Demolition Corp. (Hercules) was found responsive. Eleven of the bids were nonresponsive for failure to enter minority hiring percentage goals in the Washington Plan; one bidder failed to acknowledge a material amendment to the IFB; and one bidder did not provide a bid bond in the required amount.

On June 10, 1976, GSA decided to cancel the IFB on the basis that the contract specifications were ambiguous. Amendment No. 4 was issued on June 14, 1976, converting the IFB to a negotiated procurement. The basis for negotiation was that a public exigency existed within the purview of 41 U.S.C. § 252(c)(2) (1970). The specifications were revised in amendment 4 to eliminate the ambiguities. Hercules protests the cancellation of the IFB and the subsequent procurement by negotiation.

In the agency report of July 23, 1976, GSA states the contracting officer has a second basis for canceling the IFB if the specifications are not ambiguous. The alternate basis is that the only responsive bid (Hercules) is unreasonable as to price. Hercules contends the specifications were not ambiguous and that its price was in line with the second, third and fifth low bids and the Government estimate.

The Federal Procurement Regulations (FPR) § 1-2.404-1(a) (1964 ed. circ. 1), provides, in substance, that after bids have been opened award must be made to the lowest responsive, responsible bidder unless there is a compelling reason to reject all bids and readvertise. However, under FPR § 1-2.404-1(b) (1964 ed. amend. 121), the invitation may be canceled after opening if the prices on all otherwise acceptable bids are unreasonable. The section, in pertinent part, states:

"(b) Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where such action is consistent with § 1-2.404-1(a) and the contracting officer determines in writing that cancellation is in the best interest of the Government for reasons such as the following: \* \* \*

"(5) All otherwise acceptable bids received are at unreasonable prices. \* \* \*" (Emphasis added.)

Further, FPR § 1-2.404-2 (1964 ed. amend. 121), entitled "Rejection of individual bids," provides in subsection (c) that any bid may be rejected if the contracting officer determines in writing that the bid price is unreasonable.

While this determination has not yet been put into writing, GSA points out that our Office has held that once the propriety of a procurement action has been questioned through the filing of a protest, GAO is obligated to consider all relevant circumstances including any which may not have been considered initially by the contracting officer. Juanita H. Burns et al., 55 Comp. Gen. 587, 588 (1975) 75-2 CPD 400. Further, GSA has indicated that the contracting officer is prepared to formalize the determination that the Hercules bid price is unreasonable.

In this vein, GSA states that its estimate of \$275,000 for the demolition work is unreliable in view of the different values contractors place on the material obtained from the demolition. In view of the fact that the Hercules bid (\$262,219) is \$69,900 or 36 percent higher than the low bid (\$192,319) submitted by United Rigging and Hauling, Inc. (United), GSA states that the Hercules bid price is unreasonable.

Contracting officers are clothed with broad powers of discretion in deciding whether an invitation should be canceled, and our Office will not interfere with such a decision unless it is unreasonable. Support Contractors, Inc., B-181607, March 18, 1975, 75-1, CPD 160; 50 Comp. Gen. 177 (1970). In that connection, we have stated that a determination as to unreasonableness of price will be sustained barring bad faith or fraud. See B-161797, September 6, 1967. B-164931, September 5, 1968. Further, we have held that the bid of a nonresponsive bidder is relevant to the determination of what is a reasonable price. Support Contractors, Inc., supra. Also, we have specifically held that when it is administratively determined that the lowest responsive bid is in excess of the amount for which the Government should be able to procure the particular services, a rejection of all bids and a resolicitation is proper. 36 Comp. Gen. 364, 365 (1956). In the last cited decision, it was stated:

"We cannot, however, consider the matter of competitive bidding for Government contracts solely as a game, in which the contract must automatically go to the lowest bidder without regard to the reasonableness of his price or to other attempted bids which cannot for technical reasons be accepted. \* \* \*" (Emphasis supplied.)

Moreover, our Office previously has upheld the rejection of all bids and resolicitation where the only responsive bid was lower than the Government's original estimated cost, but the amount of the low unacceptable bid provided support for the rejection. B-164931, supra.


Hercules contends that United's bid should not be used as a standard to measure the reasonableness of Hercules' bid because the United bid was accompanied by a 10-percent, instead of the required 20-percent, bid bond, which would affect the price of United's bid. In another instance, we decided that where the low bidder could not submit sufficient evidence to permit correction, but the next acceptable bid was \$500,000 higher than the low bidder's alleged intended bid, it was proper to compare the two bids in determining that the only responsive bid was unreasonable. B-154449, October 30, 1964. See also B-165045, December 26, 1968. In view of the wide difference between the Hercules and United bid prices, we would be unable to conclude that any additional cost that might be involved

in obtaining a 20-percent bid bond would render the agency determination unreasonable.

In the circumstances, we conclude that there would be no legal objection we could make if the resolicitation is supported by a determination that the Hercules bid is unreasonable as to price. Therefore, it is not necessary to consider whether the specifications are ambiguous.

Hercules contends that a "public exigency" sufficient to warrant negotiation of the contract did not exist. However, it appears now that there is a basis for negotiation to be predicated upon 41 U.S.C. § 252(c)(14) which permits the use of negotiation procedures where the bid prices, after formal advertising, have been determined to be unreasonable. See B-146080, June 6, 1963. Therefore, whether a "public exigency" existed to support negotiation is unimportant.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States